

**License Number D25209** \* **Case Number: 2013-0874**  
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## PROCEDURAL HISTORY

(1) On the filing of certified docket entries with the Board by the Office of the Attorney General, a disciplinary panel shall order the suspension of a license if the

licensee is convicted of or pleads nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

- (2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, a disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General.

Md. Health Occ. (“H.O.”) Code Ann, §14-404(b)(2) (2009 & Supp. 2013). Attached to the petition was the Final Decision and Order dated April 22, 2013, and the Opinion of the U.S. Court of Appeals for the Fourth Circuit dated April 23, 2013.<sup>1</sup>

The Show Cause Order mandated that Dr. McLean show cause in writing, by March 19, 2014, why his medical license should not be revoked pursuant to H.O. §14-404(b)(2). The Board did not receive any response from Dr. McLean or from anyone representing Dr. McLean.

A disciplinary panel of the Board -- Disciplinary Panel B -- convened for a final decision on April 23, 2014. Having reviewed and considered the entire record in this case, Disciplinary Panel B issues this Final Decision and Order.

### **FINDINGS OF FACT**

Disciplinary Panel B finds the following facts by a preponderance of the evidence:

1. Dr. McLean is a physician licensed by the Board since July 23, 1980.
2. At all times relevant to the Board’s investigation, Dr. McLean has held a license to practice medicine in the State of Maryland.
3. Dr. McLean was charged in the U.S. District Court for the District of Maryland on August 31, 2010, with seven counts of felony Health Care Fraud and False Statements Relating to Health Care Matters, in violation of 18 U.S.C. §§1347 and 1035(a)(2).
4. Dr. McLean pled not guilty to the charges in the indictment.
5. Dr. McLean requested a jury trial which took place over approximately two weeks in July, 2011.

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<sup>1</sup> Prior to the Board’s suspension of Dr. McLean’s license in April, 2013, the Board had already reviewed the certified copies of the Indictment, Verdict Form, sentencing transcript, Judgment and Notice of Appeal in this case.

6. Dr. McLean was represented by counsel throughout the criminal proceedings in his case.
7. On July 29, 2011, following the trial, a federal jury found Dr. McLean guilty of all counts with exception to Count 6, which the prosecutor dismissed with prejudice prior to the trial. The six counts of which Dr. McLean was found guilty, in violation of 18 U.S.C. §1347,<sup>2</sup> and 18 U.S.C. §1035(a)(2),<sup>3</sup> were as follows:

**Counts 1-5, 7: Health Care Fraud (18 U.S.C. §1347) and False Statements Relating to Health Care Matters (18 U.S.C. §1035(a)(2))**

- (a) **Count One:** Beginning at least in 2003 and continuing through May 2007, Dr. McLean knowingly and willfully submitted insurance claims to Medicare, Medicaid and private insurers for medically unnecessary stent procedures that he performed and for unnecessary cardiac testing and procedures that he ordered on patients. Dr. McLean falsely documented on patient records the need for said testing and procedures for the purpose of increasing his profit and revenue and personally profited from this scheme to defraud.
- (b) **Count Two:** On or about September 8, 2005, Dr. McLean knowingly and willfully caused an entry in a patient's medical record to state that the lesion in the patient's left anterior artery ("LAD") was 80 percent, well knowing that the medical record contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 80 percent.
- (c) **Count Three:** On or about November 2, 2005, Dr. McLean knowingly and willfully caused an entry in a patient's medical record to state that the lesion in the patient's LAD was 80 to 90 percent, well knowing that this entry contained a materially false,

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<sup>2</sup> Section 347 of the United States Code provides:

**Health care fraud**

- (a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice –
  - (1) to defraud any health care program; or
  - (2) to obtain, by means of false or fraudulent pretenses, representation, or promises, any of the money or property owned by, or under the custody or control of, any health care program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years or both.
- (b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.

18 U.S.C. §1347.

<sup>3</sup> Section 1035 of the United States Code provides:

**False statements relating to health care matters**

- (a) Whoever, in any matter involving a health care benefit program, knowingly and willfully—
  - (1) Falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or
  - (2) Makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 5 years or both.

18 U.S.C. §1035.



- fictitious and fraudulent statement, in that the lesion was substantially less than 80 to 90 percent.
- (d) **Count Four:** On or about December 12, 2005, Dr. McLean knowingly and willfully caused an entry in a patient's medical record to state that the lesion in the patient's right coronary artery ("RCA") was 80 to 90 percent, well knowing that the medical record contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 80 to 90 percent.
  - (e) **Count Five:** On or about March 29, 2006, Dr. McLean knowingly and willfully caused an entry in a patient's medical record to state that the lesion in the patient's LAD was 80 percent, well knowing that the medical record contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was considerably less than 80 percent.
  - (f) **Count Seven:** On or about July 24, 2006, Dr. McLean knowingly and willfully caused an entry in a patient's medical record to state that the lesion in the patient's LAD was 80 to 90 percent, well knowing that the medical record contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 80 to 90 percent.
8. In convicting Dr. McLean of health care fraud and making false statements relating to health care matters, the jury found that he had implanted medically-unnecessary cardiac stents in more than 100 patients. He also prescribed unnecessary follow up diagnostic tests – for example, nuclear stress tests – and he falsified patient medical records to establish the necessity of the procedures. After receiving a subpoena from the U.S. Attorney's Office, Dr. McLean began to shred medical files. In fact, when the agents executed a search warrant, he was discovered going through subpoenaed patient files and apparently putting the contents into a shred box.
  9. The federal court also stated that Dr. McLean's criminal acts were not due to physical handicaps, incompetence, or lack of training, but were "largely for the money." In the court's view, it was clear that Dr. McLean implanted unnecessary stents and prescribed unnecessary diagnostic procedures for the basest of reasons – greed.
  10. On November 10, 2011, the federal court sentenced Dr. McLean to 97 months imprisonment, followed by three (3) years of supervised release as to Counts 1, 2, 3, 4, 5 and 7, all to run concurrently and to include a special condition of mental health counseling. The court imposed a special assessment of \$600 and restitution in the amount of \$579,070.
  11. On November 15, 2011, Dr. McLean filed an appeal of his criminal conviction.
  12. On April 23, 2013, the U.S. Court of Appeals for the Fourth Circuit issued an Opinion affirming Dr. McLean's convictions and sentence. The appellate court concluded, *inter alia*, that direct evidence supported the jury's verdict of Dr. McLean's fraudulent scheme to defraud insurers, that he submitted claims for medically unnecessary stent procedures, that he willfully misrepresented the level of stenosis in patients' arteries, and recorded stenosis of 10% to 95% for lesions of no more than 10% to 30% in numerous cases.

13. Pursuant to COMAR 10.32.02.08 C, Disciplinary Panel B reviewed all of the documents in this case, including the Final Decision and Order dated April 22, 2013, the Opinion issued by the U.S. Court of Appeals for the Fourth Circuit and the filing submitted by the State, as well as the criminal docket entries and relevant criminal documents received from the U.S. District Court.

### **CONCLUSIONS OF LAW**

Dr. McLean committed crimes of moral turpitude. He was convicted of knowingly and willfully submitting false and fraudulent bills to Medicare, Medicaid and private insurers. He did so in order to obtain payment for these services, in violation of 18 U.S.C. §1347, a statute whose essential elements include a scheme to defraud and an intent to defraud. His actions included, but are not limited to, implanting unnecessary cardiac stents in more than 100 patients; falsely recording in patients' medical records the existence or extent of coronary artery blockages; submitting fraudulent claims to health benefit programs; and ordering his patients to undergo a battery of unnecessary follow up tests such as Cardiolite Stress Tests; echocardiograms and EKGs.

If fraud or an intent to defraud is an essential element of a statute under which a defendant is convicted, the crime is one involving moral turpitude as a matter of law. *Attorney Grievance Commission v. Klauber*, 289 Md. 446, 457-59, *cert. denied*, 451 U.S. 1018 (1981) (the term "moral turpitude" connotes a fraudulent or dishonest intent); *Attorney Grievance Comm'n v. Walman*, 280 Md. 453, 459-60 (1977) (a crime of moral turpitude is characterized by dishonesty, fraud, or deceit); *Oltman v. Maryland State Board of Physicians*, 162 Md. App. 453, 485-87, *cert. denied*, 389 Md. 125 (2005) (crime was one of moral turpitude [because] it was dishonest, and characterized by fraud); *see also Board of Physician Quality Assurance v. Felsenberg*, 351 Md. 288, 295 (1998) (crimes involving fraud are crimes involving moral turpitude).

It is also settled that “the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude.” *Oltman*, 162 Md. App. at 486, citing *Klauber*, 289 Md. at 457-58 and *Walman*, 280 Md. at 459-60. [citations and quotation marks omitted]. By making materially false, fictitious, fraudulent and dishonest statements, Dr. McLean intended to defraud and deceive Medicare, Medicaid and private health care insurers to obtain monetary reimbursement to which he was not entitled. Dr. McLean’s willful submissions of fraudulent bills were characterized by repeated fraud, deceit and intentional dishonesty for purposes of his own personal gain. His crimes therefore established moral turpitude. *Oltman*, 162 Md. App. at 486.

Moreover, in prior decisions, the Board has concluded that health care fraud, in violation of 18 U.S.C. §1347, is a crime of moral turpitude. See e.g., *In the Matter of Douglas F. Greer, M.D.*, Case Nos, 2008-0640, 2008-0653, July 23, 2009; *In the Matter of Ehigiator Akhigbe, M.D.*, Case No. 2010-0770. In prior decisions, the Board also concluded that knowingly and willfully making a materially false, fictitious and fraudulent statement and representation in connection with the delivery of health care benefits, items and services, in violation of 18 U.S.C. §1035, is a crime of oral turpitude. See e.g. *In the Matter of Martin R. McLaren, M.D.*, Case No. 2008-0811, July 23, 2009; see also *Akhigbe, M.D., supra*.

In addition, the Board has concluded in multiple prior decisions that defrauding health plans constitutes a crime of moral turpitude. See e.g., *In the Matter of Oparaugo I. Udebiuwa*, Case No. 2006-0851, October 24, 2007; *In the Matter of Roman Ostrovsky*, Case No, 2006-0522, June 12, 2007; *In the Matter of James An Nguyen, M.D.*, Case No. 2004-0638, February 1, 2006; see also *Akhigbe, M.D., supra*.



Dr. McLean's criminal violations also undermine the public's confidence in the medical profession. *See Stidwell v. Maryland State Board of Chiropractic Examiners*, 144 Md. App. 613, 619 (2002)(a criminal offense that undermines the public's confidence in a profession may be a crime of moral turpitude if so determined by the appropriate licensing board). In addition, Dr. McLean's repeated fraudulent billing was "an act of baseness, vileness, or depravity in the private and social duties which man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Board of Dental Examiners v. Lazell*, 172 Md. 314, 320 (1937). In the panel's view, Dr. McLean's exploitation of a health care plan to this extent, as well as the long-standing and repetitive nature of his criminal conduct, disparaged professional principles, and were a disgrace to the medical profession. Under any definition of the term of Maryland law, Dr. McLean's crime constituted a crime of moral turpitude, in violation of H.O. §14-404(b)(2).

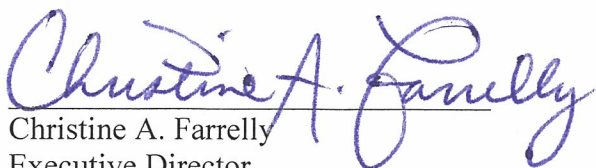
### **ORDER**

It is hereby:

**ORDERED** that the license of John R. McLean, M.D., license number D25209, to practice medicine in the State of Maryland, is hereby **REVOKED** as mandated by Md. Code Ann., Health Occ. §14-404(b)(2); and it is further

**ORDERED** that this is a Final Order of a disciplinary panel of the Maryland State Board of Physicians and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-101 *et seq.* (2014)

11/13/2014  
Date

  
Christine A. Farrelly  
Executive Director  
Maryland State Board of Physicians

## **NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Md. Code Ann., Health Occ. § 14-408(a), Dr. McLean has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this Final Decision and Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. McLean files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians  
Christine A. Farrelly, Executive Director  
4201 Patterson Avenue  
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Noreen M. Rubin  
Assistant Attorney General  
Department of Health and Mental Hygiene  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**